

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LUCILLE HALL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:06CV946-MHT
)	
GENPAK OF MONTGOMERY,)	
)	
Defendant.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

This action is presently before the court on defendant's motion to dismiss for failure to prosecute (Doc. # 23). In its motion, defendant represents that plaintiff has failed to comply with her discovery obligations and has failed to respond in any manner to defendant's attempts to contact her by telephone and letter regarding outstanding discovery. The court directed plaintiff to show cause why the motion to dismiss should not be granted. In response, plaintiff filed a document styled "Request." Plaintiff does not, in this pleading, dispute that she has failed to engage in required discovery. Rather, she suggests that it is difficult to gather the information requested by defendant due to her personal obligations and problems, including the requirements of her new job and the death of her mother. She seeks a continuance of this action.

In view of plaintiff's response to the show cause order, it is the
RECOMMENDATION of the Magistrate Judge:

- (1) that defendant's motion to dismiss be DENIED without prejudice;
- (2) that the scheduling order entered by the District Judge on January 24, 2007 be

VACATED; and

(3) that this matter be referred back to the undersigned Magistrate Judge for further proceedings, including a status conference to address defendant's contention that it has been unable to secure plaintiff's cooperation in discovery, and the entry of a new scheduling order.

The Clerk of the Court is ORDERED to file the Recommendation of the Magistrate Judge and to serve a copy on the parties to this action. The parties are DIRECTED to file any objections to this Recommendation on or before July 23, 2007. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. Resolution Trust Co. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993); Henley v. Johnson, 885 F.2d 790, 794 (11th Cir. 1989).

DONE, this 9th day of July, 2007.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE